

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. _____
v.	:	DATE FILED: _____
MICHAEL KOGAN	:	VIOLETIONS: 18 U.S.C. § 1341 (mail fraud - 53 counts)
	:	18 U.S.C. § 1343 (wire fraud - 3 counts)
	:	18 U.S.C. § 2 (aiding and abetting)
	:	18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c) (forfeiture)

I N D I C T M E N T

THE GRAND JURY CHARGES THAT:

INTRODUCTION

At all times relevant to this Indictment:

1. The defendant MICHAEL KOGAN was the president of a corporation known as Kogan & Company, Inc., with an office at 261 Old York Road, Suite 621, Jenkintown, Pa.

2. Neither Kogan & Company, Inc. nor the defendant MICHAEL KOGAN was licensed to conduct securities transactions on behalf of others by the National Association of Securities Dealers ("NASD").

3. Penn Financial Group, Inc. ("PFG") was a broker/dealer licensed by the NASD, operating a brokerage firm at 261 Old York Road, Suite 633, Jenkintown, PA ("Suite 633"), across the hall from Kogan & Company, Inc.

4. Fiserv Securities, Inc. ("Fiserv") was a clearing house that contracted with PFG to hold and process its brokerage accounts, including executing securities trades in the accounts, transferring or wiring funds into and out of the accounts, processing deposits of funds into the accounts and withdrawals of funds from the accounts, and causing statements to be sent to PFG's clients reflecting activity in the accounts.

5. The defendant MICHAEL KOGAN had access to the office of PFG in Suite 633 and used the facilities of PFG in Suite 633, including the facsimile machine and the Federal Express account of PFG.

6. M.B., L.B, husband and wife, and their son, Y.B., persons known to the Grand Jury (the "victims"), were residents of New Jersey, where they operated businesses known as Splash of Tile, Inc. and B & B Tile, Inc.

THE SCHEME TO DEFRAUD

7. From on or about October 1, 2001, through on or about December 31, 2002, in the Eastern District of Pennsylvania and elsewhere, defendant

MICHAEL KOGAN

devised and intended to devise a scheme to defraud M.B., L.B. and Y.B., and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

8. It was part of the scheme that:

(a) the defendant MICHAEL KOGAN falsely held himself out to the victims as an authorized representative of PFG;

(b) the defendant MICHAEL KOGAN solicited and accepted from the victims investments valued at more than \$670,000, including stocks, checks and cash;

(c) the defendant MICHAEL KOGAN often used the Federal Express account of PFG to enable the victims to mail their checks for investment to PFG;

(d) the defendant MICHAEL KOGAN falsely represented to the victims that their investments were held in nine accounts in their names or the names of their businesses at PFG;

(e) the defendant MICHAEL KOGAN provided the victims with a Fiserv brochure and Fiserv account applications, thus creating the impression that their investments were held in accounts at PFG serviced by Fiserv;

(f) the defendant MICHAEL KOGAN in fact opened only two accounts for the victims at PFG, one titled to M.B. and L.B. and one titled to Splash of Tile, Inc., both of which were serviced by Fiserv;

(g) for the two accounts that were opened for the victims at PFG and serviced by Fiserv, the defendant MICHAEL KOGAN caused false addresses for M.B., L.B. and Splash of

Tile, Inc. to be provided to Fiserv, so that the true statements for those accounts were never sent to the victims;

(h) for each of the nine accounts the victims thought they had, the defendant MICHAEL KOGAN caused false monthly account statements to be sent by United States mail to the victims at their correct address;

(i) the false monthly account statements mailed to the victims purported to be PFG statements and reflected the investments the victims had made through the defendant MICHAEL KOGAN, as well as substantial purported earnings on those investments;

(j) without the victims' authorization, the defendant MICHAEL KOGAN diverted to accounts under his control the funds the victims had entrusted to him for investment at PFG; and

(k) after diverting the victim's investment funds, the defendant MICHAEL KOGAN used the funds for matters not authorized by the victims.

COUNTS 1 - 4
(MAILING THE INVESTMENTS)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 8 of the Introduction to this Indictment are incorporated here.

2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, having devised and intending to devise the scheme described above, the defendant

MICHAEL KOGAN

for the purpose of executing the scheme and attempting to do so, knowingly caused to be delivered to 261 Old York Road, Suite 633, Jenkintown, PA, by commercial interstate carrier, that is, Federal Express, according to the directions thereon, the following:

<u>Count</u>	<u>Approximate Mailing Date</u>	<u>Sender</u>	<u>Recipient</u>	<u>Contents</u>
1	10/13/01	M.B.	Mike Kogan	\$100,000 check from Splash of Tile, Inc.
2	2/18/02	L.B.	Mike Kogan	\$100,000 check from Splash of Tile, Inc. and \$50,000 check from M.B. and L.B.
3	5/4/02	L.B.	Mike Kogan	\$40,000 check from Splash of Tile, Inc.
4	6/15/02	M.B.	Mike Kogan	\$6,045 check from M.B. and L.B.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 5 - 53
(MAILING THE FALSE ACCOUNT STATEMENTS)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 8 of the Introduction to this Indictment are incorporated here.

2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, having devised and intending to devise the scheme described above, the defendant

MICHAEL KOGAN

for the purpose of executing the scheme and attempting to do so, knowingly caused to be placed in an authorized depository for mail matter in the Eastern District of Pennsylvania to be sent or delivered by the Postal Service, the following false account statements which purported to represent funds invested at PFG, together with substantial earnings thereon, when, in fact, either no such account existed at PFG or the true account balance was substantially lower:

Account for Splash of Tile, Inc., Attn: M.B., No. 51751851

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
5	10/31/01- 11/30/01	12/1/01	\$100,668.28	\$ 100.13
6	12/31/01- 1/31/02	2/1/02	\$ 1,046.58	\$ 100.23
7	1/31/02- 2/28/02	3/1/02	\$101,358.72	\$ 4.84

Account for Splash of Tile, Inc.,
Attn: M.B., No. 51751851 (cont'd)

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
8	2/28/02- 3/28/02	4/1/02	\$103,984.15	\$ 4.84
9	3/28/02- 4/30/02	5/1/02	\$146,809.63	\$ 7.97
10	4/30/02- 5/31/02	6/1/02	\$150,671.47	\$ 7.97
11	5/31/02- 6/28/02	7/1/02	\$196,637.04	\$ 7.97
12	6/28/02- 7/31/02	8/1/02	\$200,113.22	\$ 7.97
13	7/31/02- 8/30/02	9/1/02	\$203,215.35	\$ 7.97
14	8/30/02- 9/30/02	10/1/02	\$206,718.29	\$ 7.97
15	9/30/02- 10/31/02	11/1/02	\$210,273.75	\$ 7.97
16	10/31/02- 11/29/02	12/1/02	\$ 60,212.37	\$ 7.97

Purported Account for Splash of Tile, Inc.,
Attn: M.B., No. 51752091

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
17	10/30/02- 11/29/02	12/1/02	\$106,162.41	no PFG account

Purported Account for B & B Tile, Inc., Attn: Y.B., No. 51752105

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
18	10/31/02- 11/29/02	12/1/02	\$ 50,298.41	no PFG account

Account for M.B. & L.B. JTWROS, No. 51752025

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
19	4/30/02- 5/31/02	6/1/02	\$147,809.32	\$141,462.96
20	5/31/02- 6/28/02	7/1/02	\$138,105.89	\$130,391.93
21	6/28/02- 7/31/02	8/1/02	\$133,040.40	\$ 11,850.34
22	7/31/02- 8/30/02	9/1/02	\$133,841.34	\$ **
23	8/30/02- 9/30/02	10/1/02	\$136,659.42	\$ **
24	9/30/02- 10/31/02	11/1/02	\$149,033.67	\$ **

** == substantially unchanged from 8/1/02

Purported Account for M.B. & L.B. JTWROS, No. 51751897

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
--------------	-------------------------------------	---	--	---

25	12/31/01- 1/31/02	2/1/02	\$101,528.11	no PFG account
26	1/31/02- 2/28/02	3/1/02	\$153,231.45	no PFG account
27	2/28/02- 3/28/02	4/1/02	\$158,012.84	no PFG account

Purported Account for M.B. & L.B. JTWROS, No. 51751897 (cont'd)

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
28	3/28/02- 4/30/02	5/1/02	\$117,182.36	no PFG account
29	4/30/02- 5/31/02	6/1/02	\$119,550.32	no PFG account
30	5/31/02- 6/28/02	7/1/02	\$147,504.83	no PFG account
31	6/28/02- 7/31/02	8/1/02	\$149,888.99	no PFG account
32	7/31/02- 8/30/02	9/1/02	\$151,983.15	no PFG account
33	8/30/02- 9/30/02	10/1/02	\$154,585.87	no PFG account
34	9/30/02- 10/31/02	11/1/02	\$157,167.36	no PFG account
35	10/31/02- 11/29/02	12/1/02	\$ 83,375.76	no PFG account

Purported Account for M.B. & L.B. JTWROS, No. 51752074

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
36	10/31/02-	12/1/02	\$ 78,641.02	no PFG account

11/29/02

Purported Account for M.B., No. 51751909

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
37	3/28/02-4/30/02	5/1/02	\$104,789.42	no PFG account
38	4/30/02-5/31/02	6/1/02	\$132,047.83	no PFG account

Purported Account for M.B., No. 51751909 (cont'd)

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
39	5/31/02-6/28/02	7/1/02	\$135,070.01	no PFG account
40	6/28/02-7/31/02	8/1/02	\$137,172.65	no PFG account
41	7/31/02-8/30/02	9/1/02	\$148,822.71	no PFG account
42	8/30/02-9/30/02	10/1/02	\$151,416.90	no PFG account
43	9/30/02-10/31/02	11/1/02	\$153,995.54	no PFG account
44	10/31/02-11/29/01	12/1/02	\$ 81,866.95	no PFG account

Purported Account for M.B., No. 51752049

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
45	10/31/02-11/29/02	12/1/02	\$ 76,829.13	PFG account 51752049 not titled to M.B.

Purported Account for Y.B., No. 51751929

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
46	3/28/02- 4/30/02	5/1/02	\$ 40,549.22	no PFG account
47	4/30/02- 5/31/02	6/1/02	\$ 41,150.34	no PFG account
48	5/31/02- 6/28/02	7/1/02	\$ 42,063.56	no PFG account
49	6/28/02- 7/31/02	8/1/02	\$ 42,730.75	no PFG account

Purported Account for Y.B., No. 51751929 (cont'd)

<u>Count</u>	<u>False Statement Date</u>	<u>Approximate Mailing Date</u>	<u>False PFG Account Balance</u>	<u>True PFG Account Balance</u>
50	7/31/02- 8/30/02	9/1/02	\$ 49,932.69	no PFG account
51	8/30/02- 9/30/02	10/1/02	\$ 50,806.51	no PFG account
52	9/30/02- 10/31/02	11/1/02	\$ 51,667.64	no PFG account
53	10/31/02- 11/29/02	12/1/02	\$ 58,969.79	no PFG account

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 54 - 56
(WIRE FRAUD)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 8 of the Introduction to this Indictment are incorporated here.

2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, having devised and intending to devise the scheme described above, the defendant

MICHAEL KOGAN

for the purpose of executing the scheme, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds constituting the facsimile transmissions described below from the defendant MICHAEL KOGAN at Penn Financial Group, Inc. in Pennsylvania at telephone number (215) 886-7928 to M.B., L.B. and Y.B., in New Jersey at telephone number (908) 542-1121:

<u>Count</u>	<u>Facsimile Date</u>	<u>Document</u>
54	October 11, 2001	instructions to the victims from defendant MICHAEL KOGAN for wiring funds for the Splash of Tile, Inc. account at PFG to Fiserv
55	May 6, 2002	memo to the victims from defendant MICHAEL KOGAN containing recommendations on diversification of their stock portfolio
56	July 9, 2002	false list of stocks purportedly held by the victims with a handwritten note by defendant MICHAEL KOGAN to the victims

In violation of Title 18, United States Code, Sections 1343 and 2.

NOTICE OF FORFEITURE

1. As a result of the violations of Title 18, United States Code, Sections 1341 and 1343, set forth in Counts 1 through 56 of this Indictment, the defendant

MICHAEL KOGAN

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, as charged in this Indictment, including, but not limited to, the sum of \$671,955.32.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating 21 U.S.C. § 853(p), to

seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:

FOREPERSON

PATRICK L. MEEHAN
United States Attorney